

**CONTRACT FOR THE USE OF HOME FUNDS  
BETWEEN  
ALAMEDA POINT COLLABORATIVE, INC.  
AND  
THE CITY OF ALAMEDA**

THIS CONTRACT FOR THE USE OF HOME FUNDS (“**Contract**”), made and entered into as of January 13, 2012 by and between the CITY of ALAMEDA, a municipal corporation existing under the law of the State of California and its Charter (“**CITY**”) and Alameda Point Collaborative, Inc., a California nonprofit public benefit corporation (“**CONTRACTOR**”).

**RECITALS**

This Contract is entered into upon the following facts, understandings, representations, and intentions of the parties:

A. **CONTRACTOR** is a County of Alameda Community Housing Development Organization (“**CHDO**”).

B. **CITY** is desirous of contracting with **CONTRACTOR** for the provision of certain services described in Exhibit A attached hereto.

C. **CONTRACTOR**, the Alameda Reuse and Redevelopment Authority, a joint powers authority formed under California law, (hereinafter the “**ARRA**”), and Alameda County, through its Department of Housing and Community Development, a political subdivision of the State of California (hereinafter the “**County**”), entered into that certain Legally Binding Agreement and Property Lease (240 Corpus Christi, 230 Corpus Christi, 2471 Orion, 2451 Orion, 201 Stardust, 251 Stardust, 271 Stardust) dated as of January 13, 2012 (the “**LBA**”), which pertains to the acquisition of a leasehold interest in certain real property located in the City of Alameda, County of Alameda, State of California, Buildings 802 and 803 commonly known as 240 and 230 Corpus Christi Road, Buildings 812 and 806 commonly known as 2451 and 2471 Orion Street, and Buildings 809, 810, and 811 commonly known as 201, 251, and 271 Stardust Place (collectively, the “**Property**”).

D. **CITY** is a Participating Jurisdiction in the Alameda County HOME Consortium, under, and a recipient of, funds (“**HOME Funds**”) from the U.S. Department of Housing and Urban Development (“**HUD**”) under the HOME Investment Partnerships Act Program pursuant to the Cranston-Gonzales National Affordable Housing Act of 1990 (42 U.S.C. 12705 *et seq.*), as amended (“**HOME**”).

E. Alameda County Housing and Community Development, as lead agency in the Alameda County HOME Consortium, has approved the services specified in this Contract as evidenced by a project approval letter.

F. CONTRACTOR represents it is willing and able to perform duties and render services which are determined by the CITY to be necessary or appropriate for the welfare of residents of the CITY.

G. **[To confirm the following]** In accordance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321-4347) (“**NEPA**”), the County, as the responsible agency, has determined that the Project is categorically excluded from NEPA and exempt pursuant to 24 Code of Federal Regulations (“**CFR**”) Section 58.34(a)(12).

H. CITY desires that such duties and services be provided by CONTRACTOR, and CONTRACTOR agrees to perform such duties and render such services on the terms and conditions set forth below:

NOW, THEREFORE, in consideration of the promises and the respective covenants and agreements contained herein, the parties hereby agree as follows:

1. CONTRACTOR shall perform the duties and services described in Exhibit A attached hereto for the Project (as defined in Exhibit A), and shall comply with all provisions, perform all work, and provide all such duties and services set forth in Exhibit A attached hereto in a professional and diligent manner.

2. CITY has allocated Three Hundred Seventy-Nine Thousand Dollars (\$379,000) in HOME Funds to be expended under this Contract as the Loan (as defined on Exhibit B attached hereto). The terms and conditions for disbursement of the Loan proceeds are set forth in Exhibit B attached hereto. The Loan shall be evidenced by the Promissory Note (as defined in Exhibit B attached hereto) of even date herewith, executed by CONTRACTOR, evidencing CONTRACTOR’S obligation to repay the Loan. The Promissory Note will be secured by a deed of trust among CONTRACTOR, as trustor, and the CITY, as beneficiary (the “**Deed of Trust**”), that will encumber the Property to secure repayment of the Loan and performance of the Loan Documents (as defined below). A regulatory agreement between the CITY and CONTRACTOR associated with the Loan (the “**Regulatory Agreement**”) shall also be recorded against the Property. “**Loan Documents**” means this Contract, the Promissory Note, the Deed of Trust, the Regulatory Agreement, and any other document or agreement evidencing the Loan. CONTRACTOR shall use the proceeds of the Loan for the purposes described in Exhibit A attached hereto and in accordance with the Budget (as defined below). CONTRACTOR shall not use the Loan for any other purposes without the prior written consent of the CITY. The “**Budget**” shall mean the initial budget attached hereto as Exhibit B-1, as updated from time to time and approved in writing by the Director of the Housing Department on behalf of the CITY

or his/her designee as part of processing a draw request.

3. The term of this Contract begins as of January 13, 2012 and shall terminate on January 12, 2059.

4. All housing assisted through this Contract shall meet at a minimum the HOME affordability requirements of 24 CFR Part 92.252 or 92.254. For all housing assisted through this Contract, CONTRACTOR shall execute a regulatory agreement that will be recorded as a deed restriction and will specify a term of affordability that will last fifteen (15) years from the issuance of the certificate of occupancy for such housing.

5. CONTRACTOR shall maintain on a current basis complete records, including books of original entry, source documents supporting accounting transactions, eligibility and service records as may be applicable, a general ledger, personnel and payroll records, canceled checks, and related documents and records to assure proper accounting of funds and performance of this Contract in accordance with instructions provided and to be provided by CITY. CONTRACTOR shall comply with all such instructions.

6. CONTRACTOR shall maintain Project-specific records demonstrating compliance with the HOME regulations at 24 CFR Part 92, Subpart F, concerning property standards, energy efficiency, tenant protection, qualification as affordable housing, and other Project requirements. All such records shall be made available for inspection by CITY upon CITY's request.

7. As required by HOME regulations, all Project records are to be retained by CONTRACTOR for at least five (5) years beyond the term of affordability for the units acquired, rehabilitated or constructed under this Contract. Because the term of affordability under this Contract is fifteen (15) years, CONTRACTOR shall retain records for a minimum of twenty (20) years. CONTRACTOR shall cooperate with CITY in the preparation of, and will timely furnish any and all information required for reports to be prepared by CITY as may be required by the rules, regulations, or requirements of CITY or of any other governmental entity. CONTRACTOR shall also permit access to all books, accounts, or records of any kind to CITY or to any other governmental entity for purposes of audit or investigation, in order to ascertain compliance with the provisions of this Contract.

8. CONTRACTOR shall comply with all federal requirements specified in the HOME regulations at 24 CFR Part 92, Subpart H, governing equal opportunity, fair housing, affirmative marketing, relocation, labor standards, environmental review, lead-based paint, and other federal requirements.

9. CONTRACTOR shall indemnify, defend and hold harmless the CITY and the Authority and their officers, directors, employees, agents, representatives, and contractors and

shall pay all costs, expenses and reasonable attorneys' fees for all trial and appellate levels and post judgment proceedings in connection with any fines, suits, actions, damages, liability, causes of action of every nature whatsoever arising or growing out of, or in any manner connected with, in whole or in part, any act or omission of CONTRACTOR or its agents, contractors, servants, employees, or invitees. These include, but are not limited to, any fines, claims, demands and causes of action of every nature whatsoever which may be made upon, sustained, or incurred by the CITY or the Authority by reason of any breach, violation, omission or non-performance of any term, covenant or condition hereof on the part of CONTRACTOR or its agents, contractors, servants, employees, or invitees. However, the foregoing indemnity shall not extend to damages due to the sole negligence or willful misconduct of the CITY or the Authority or their officers, directors, employees, agents, representatives, and contractors. This covenant shall survive the termination of this Contract.

10. CITY, with fourteen (14) day prior written notice to CONTRACTOR, may at any time during the term of this Contract conduct an evaluation of the CONTRACTOR's performance with respect to this Contract. Such evaluation may cover both the objectives and program of CONTRACTOR. CONTRACTOR shall maintain and retain records with respect to such objectives, program, and evaluations, and shall cooperate with CITY in making these or any other evaluation reports. CONTRACTOR shall permit access by CITY to the premises, shall furnish all information requested by CITY, and shall afford CITY access to all such records of CONTRACTOR.

11. CONTRACTOR shall be as fully responsible to CITY for the acts and omissions of any subcontractors, and of persons either directly or indirectly employed by them, as CONTRACTOR is for the acts and omissions of persons directly employed by CONTRACTOR. CONTRACTOR may transfer interest in this Contract (whether by assignment or novation) with prior written approval of CITY. CONTRACTOR may assign its rights to receive compensation from the CITY for performance of this Contract to financial institutions for the purpose of securing financial resources, provided that written consent from CITY shall have first been obtained. No party shall, on the basis of this Contract, in any way contract on behalf of, or in the name of, the other party to the Contract, and any attempted violation of these provisions shall confer no rights, and shall be void.

12. Neither CONTRACTOR nor any of its employees shall by virtue of this Contract be an employee of CITY for any purpose whatsoever, nor shall it or they be entitled to any of the rights, privileges, or benefits of CITY employees. CONTRACTOR shall be deemed at all times an independent contractor and shall be wholly responsible for the manner in which it performs the services required of it by the terms of this Contract. CONTRACTOR assumes exclusively the responsibility for the acts of its employees as they relate to the services to be provided during the course and scope of their employment.

13. CONTRACTOR shall maintain the confidentiality of any information which may

be obtained with this work. CITY shall respect the confidentiality of information furnished by CONTRACTOR to CITY.

14. CONTRACTOR shall comply with all applicable laws, ordinances, and codes of federal, state and local governments, in the performance of this Contract, including without limitation, all applicable laws and regulations governing the use of HOME Funds, including as set forth in 24 CFR Part 92 and in this Agreement.

15. CONTRACTOR shall comply with all requirements which are now, or which may hereafter be, imposed by HUD for the HOME Program, as well as such requirements as may be imposed by the CITY or the Alameda County HOME Consortium. CONTRACTOR shall not use funds received pursuant to this Contract, either directly or indirectly, as a contribution in order to obtain any federal funds under any federal programs without prior written approval of CITY. Further, CONTRACTOR agrees that upon the receipt of any funds granted, loaned, or otherwise distributed by the CONTRACTOR that CITY paid to CONTRACTOR under this Contract, or the receipt of any funds by the CONTRACTOR as a direct result of any funds granted, loaned or otherwise distributed by the CONTRACTOR that CITY paid to CONTRACTOR under this Contract, CONTRACTOR shall return the funds to CITY, unless CITY otherwise directs in writing.

16. CONTRACTOR shall comply with the Americans with Disabilities Act and Title VII of the Civil Rights Act of 1964, and agrees that no person in the United States shall, on the grounds of race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era veteran's status, political affiliation, or any other non-merit factors, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available by CITY pursuant to this Contract.

17. CONTRACTOR shall not, during the term of this Contract, without obtaining the prior written consent of CITY, permit any member of the governing board or its equivalent of the CONTRACTOR to perform for compensation any administrative or operational functions for the CONTRACTOR with respect to the performance of this Contract (including, but not by way of limitation, fiscal, accounting, or bookkeeping functions).

18. CITY and CONTRACTOR agree to abide by uniform administrative requirements stated in 24 CFR Part 92.505.

19. Rental units assisted with the HOME Funds disbursed through this Contract must be maintained in compliance with the Housing Quality Standards established by the Alameda County HOME Consortium for the duration of the regulatory agreement executed in conjunction with the Project.

20. CONTRACTOR shall not request disbursement of HOME Funds pursuant to this Contract until the funds are needed for payment of eligible costs. The amount of each request shall be limited to the amount needed.

21. In conjunction with performance of this Contract, CONTRACTOR has been made cognizant of and will comply with, all applicable affirmative action, anti-discrimination and equal opportunity guidelines and requirements of the federal, state or local government. CONTRACTOR will use its best efforts to utilize minority and female enterprises and ensure that minority and female-owned enterprises have equal opportunity to compete for subcontractor work under this Contract. CONTRACTOR shall maintain records documenting data on the race, ethnicity, and single-headed household status (by gender of household head) of households applying for or benefiting from HOME-funded activities, on actions taken to affirmatively further fair housing, and on outreach to minority and female enterprises, including data indicating the racial/ethnic or gender character of each business receiving a subcontract of \$25,000 or more paid with HOME Funds.

22. CONTRACTOR and CONTRACTOR's employees shall comply with the CITY's policy of maintaining a drug-free work place. Neither CONTRACTOR nor CONTRACTOR's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code Section 812, including marijuana, heroin, cocaine, and amphetamines, at any CITY facility or work site. If CONTRACTOR or any employee of CONTRACTOR is convicted or pleads nolo contendere to a criminal drug statute violation occurring at a CITY facility or work site, the CONTRACTOR within five days thereafter shall notify the head of the CITY department/agency for which the contract services are performed. Violation of this provision shall constitute a material breach of this Contract.

23. Time is of the essence in each and all provisions of this Contract.

24. On or before the commencement of this Contract, CONTRACTOR shall furnish CITY with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with Sections 24(a) through (e) below. Such certificates, which do not limit CONTRACTOR'S indemnification, shall also contain substantially the following statement: "Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide thirty (30) days' advance written notice to the City of Alameda by certified mail, Attention: Risk Manager." CONTRACTOR shall maintain in force at all times during the performance of this Contract all appropriate coverage of insurance required by this Contract with an insurance company that is acceptable to CITY and licensed to do insurance business in the State of California. Endorsements naming additional insureds pursuant to Section 24(d) below shall be submitted with the insurance certificates.

a. CONTRACTOR shall maintain the following insurance coverage:

- i. Workers' compensation: Statutory coverage as required by the State of California.
- ii. Commercial general liability coverage in the following minimum limits:

Bodily injury: \$500,000  
each occurrence  
\$1,000,000  
Aggregate – all other

Property damage: \$100,000 each occurrence  
\$250,000 aggregate

If submitted, combined single limit policy with aggregate limits in the amounts of 1,000,000 will be considered equivalent to the required minimums provided above.

- iii. Comprehensive automotive liability coverage in the following minimum limits:

Bodily injury: \$500,000 each occurrence  
Property damage: \$100,000 each occurrence

or

Combined Single Limit: \$500,000 each occurrence

- iv. Professional liability insurance which includes coverage for the professional acts, errors and omissions of CONTRACTOR in the amount of at least \$1,000,000.

b. CONTRACTOR agrees that in the event of loss due to any of the perils for which it has agreed to provide comprehensive general and automotive liability insurance, CONTRACTOR shall look solely to its insurance for recovery. CONTRACTOR hereby grants to CITY, on behalf of any insurer providing comprehensive general and automotive liability insurance to either CONTRACTOR or CITY with respect to the services of CONTRACTOR herein, a waiver of any right to subrogation which any such insurer of said CONTRACTOR may acquire against CITY by virtue of the payment of any loss under such insurance.

c. If CONTRACTOR at any time during the term hereof should fail to secure or maintain the foregoing insurance, CITY shall be permitted to obtain such insurance in the CONTRACTOR'S name or as an agent of the CONTRACTOR and shall be compensated by CONTRACTOR for the costs of the insurance premiums at the maximum rate permitted by law and computed from the date written notice is received that the premiums have not been paid.

d. The CITY, the Authority and their commissions, boards, departments including the electric utility Alameda Municipal Power, officers, agents and employees and any other party designated by CITY (as determined in CITY'S sole discretion), shall be named as an additional insured under all insurance coverage's, except on worker's compensation and professional liability insurance policies. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.

e. The insurance limits required by CITY are not represented as being sufficient to protect CONTRACTOR. CONTRACTOR is advised to confer with CONTRACTOR'S insurance broker to determine adequate coverage for CONTRACTOR.

25. CONTRACTOR shall comply with the requirements of the Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u, as amended ("**Section 3**"), requiring that to the greatest extent feasible projects financed by the City of Alameda HOME Program provide business, employment and training opportunities to lower income residents of the City of Alameda and agreements for work in connection with the Project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the City of Alameda. Contractor shall include the following language in all contracts for work in connection with the Project (collectively referred to as the "**Section 3 Clause**"):

1. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u, as amended (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
2. The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
3. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 Clause, and



will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

4. The contractor agrees to include this Section 3 Clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate actions, as provided in an applicable provision of the subcontract or in this Section 3 Clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
5. The contractor will certify that any vacant employment positions, including training positions, that are filled (a) after the contractor is selected but not before the contract is executed, and (b) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
6. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
7. With respect to work performed in connection with Section 3 covered Indian housing assistance (if any), Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 405e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (a) preference and opportunities for training and employment shall be given to Indians, and (b) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).
26. CONTRACTOR shall comply with the property management standards required of all federal grantees, attached hereto as Exhibit C.
27. This Contract can be amended only by written agreement of the parties hereto.

28. Each of the exhibits referenced in this Contract is attached hereto and incorporated herein.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the day first mentioned above.

Alameda Point Collaborative, Inc.,  
a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

***[Remainder of page intentionally blank; additional signature page follows.]***

CITY OF ALAMEDA,  
a municipal corporation

By: \_\_\_\_\_  
John A. Russo  
City Manager

Recommended for Approval:

By: \_\_\_\_\_  
Michael T. Pucci  
Executive Director  
Housing Authority of the City of Alameda

Approved as to form:

By: \_\_\_\_\_  
Farimah Faiz  
Assistant City Attorney

**EXHIBIT A**

**WORK PROGRAM BETWEEN  
ALAMEDA POINT COLLABORATIVE, INC.  
AND CITY OF ALAMEDA**

All terms not defined herein shall have the meanings ascribed to them in the Contract to which this Exhibit A is attached.

1. Upon approval of the Director of the Housing Department on behalf of the CITY or his/her designee, CONTRACTOR shall use the HOME Funds subject to this Contract to fund acquisition and developer fees associated with acquisition of a leasehold interest in the Property and rehabilitation of the improvements on the Property for use as transitional and permanent affordable housing for very low income households in the City of Alameda in Alameda County (the “**Project**”).
2. One hundred percent (100%) of the HOME-assisted units developed under this Contract shall rent for no greater than 30 percent (30%) of 50 percent (50%) of the area median income minus utility allowance and shall be occupied by households with incomes of not more than 50 percent (50%) of the area median income. If necessary to ensure the Project’s financial feasibility, and with the permission of the Director of the Housing Department on behalf of the CITY or his/her designee, the affordability of the units may be adjusted within the limits allowed by HOME.
3. CONTRACTOR shall execute a promissory note for the Three Hundred Seventy-Nine Thousand Dollars (\$379,000) of HOME Funds (the “**Promissory Note**”) to be expended under this Contract.
4. Upon CONTRACTOR’S acquisition of the leasehold interest in the Property, CONTRACTOR shall record against the Property the Regulatory Agreement and Deed of Trust which shall specify affordability and occupancy levels, term of affordability, maintenance and management standards, and other related requirements, and shall secure payment of the Promissory Note. The Director of the Housing Department on behalf of the CITY or his/her designee shall set the terms and conditions of the Promissory Note, Regulatory Agreement, and Deed of Trust.
5. CONTRACTOR shall meet specific timelines for the following tasks:

Initial Occupancy	January 13, 2012
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If the timeline for these tasks is not met, the Director of the Housing Department on behalf of the CITY or his/her designee, at his/her option, may void the Contract. The timeline for these

tasks may be changed upon prior written approval of the Director of the Housing Department on behalf of the CITY or his/her designee.

## **EXHIBIT B**

### **CONDITIONS OF PAYMENT BETWEEN ALAMEDA POINT COLLABORATIVE, INC. AND CITY OF ALAMEDA**

All terms not defined herein shall have the meanings ascribed to them in the Contract to which this Exhibit B is attached.

1. All disbursements shall be made in accordance with the Budget.
2. All funds disbursed to CONTRACTOR must be expended within fifteen (15) days of approval of the disbursement request.
3. CONTRACTOR may request disbursement at Initial Occupancy of up to Three Hundred Seventy-Nine Thousand Dollars (\$379,000) (the “**Loan**”) to pay acquisition and developer fees (as set forth on Exhibit B-1 attached hereto). Any such request must be accompanied by invoices or other documentation of costs incurred. The Loan shall be a nonrecourse obligation of CONTRACTOR.
4. Any change in the Budget that results in lower costs shall be communicated to the CITY immediately. If the Director of the Housing Department on behalf of the CITY or his/her designee determines that the total amount of funds under this Contract exceeds the amount necessary to complete the Project, the Director of the Housing Department on behalf of the CITY or his/her designee may adjust the Contract accordingly.

**EXHIBIT B-1**

**BUDGET**

Acquisition	\$215,000
Developer fees	164,000
<b>Total cost</b>	<hr/> <b>\$379,000</b>

## EXHIBIT C

### PROPERTY MANAGEMENT STANDARDS

1. This Exhibit prescribes uniform standards governing the utilization and disposition of property furnished by the federal government or acquired in whole or in part with federal funds by state and local governments. Federal grantor agencies shall require state and local governments to observe these standards under grants from the federal government and shall not impose additional requirements unless specifically required by federal law. The grantees shall be authorized to use their own property management standards and procedures as long as the provisions of this attachment are included.
2. The following definitions apply for the purpose of this attachment:
  - a. Real property. Real property means land, land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.
  - b. Personal property. Personal property means property of any kind except real property. It may be tangible -- having physical existence, or intangible -- having no physical existence, such as patents, inventions, and copyrights.
  - c. Nonexpendable personal property. Nonexpendable personal property means tangible personal property having a useful life of more than one year and an acquisition cost of \$300 or more per unit. A grantee may use its own definition of nonexpendable personal property provided that such definition would at least include all tangible personal property as defined above.
  - d. Expendable personal property. Expendable personal property refers to all tangible personal property other than nonexpendable property.
  - e. Excess property. Excess property means property under the control of any federal agency which, as determined by the head thereof, is no longer required for its needs.
3. Each federal grantor agency shall prescribe requirements for grantees concerning the use of real property funded partly or wholly by the federal government. Unless otherwise provided by statute, such requirements, as a minimum, shall contain the following:
  - a. The grantee shall use the real property for the authorized purpose of the original grant as long as needed.
  - b. The grantee shall obtain approval by the grantor agency for the use of the real property in other projects when the grantee determines that the property is no longer needed for the original grant purposes. Use in other projects shall be limited to those under other federal grant programs, or programs that have purposes consistent with those authorized for support by the grantor.

- c. When the real property is no longer needed as provided in subparagraphs (a) and (b) above, the grantee shall return all real property furnished or purchased wholly with federal grant funds to the control of the federal grantor agency. In the case of property purchased in part with federal grant funds, the grantee may be permitted to take title to the federal interest therein upon compensating the federal government for its fair share of the property. The federal share of the property shall be the amount computed by applying the percentage of the federal participation in the total cost of the grant program for which the property was acquired to the current fair market value of the property.
4. Standards and procedures governing ownership, use, and disposition of nonexpendable personal property furnished by the federal government or acquired with federal funds are set forth below:
- a. Nonexpendable personal property acquired with federal funds. When nonexpendable personal property is acquired by a grantee wholly or in part with federal funds, title will not be taken by the federal government except as provided in subparagraph 4(a)(4) below, but shall be vested in the grantee subject to the following restrictions on use and disposition of the property:
    - (1) The grantee shall retain the property acquired with federal funds in the grant program as long as there is a need for the property to accomplish the purpose of the grant program whether or not the program continues to be supported by federal funds. When there is no longer a need for the property to accomplish the purpose of the grant program, the grantee shall use the property in connection with other federal grants it has received in the following order of priority:
      - (a) Other grants of the same federal grantor agency needing the property.
      - (b) Grants of other federal agencies needing the property.
    - (2) When the grantee no longer has need for the property in any of its federal grant programs, the property may be used for its own official activities in accordance with the following standards:
      - (a) Nonexpendable property with an acquisition cost of less than \$500 and used four years or more. The grantee may use the property for its own official activities without reimbursement to the federal government or sell the property and retain the proceeds.
      - (b) All other nonexpendable property. The grantee may retain the property for its own use provided that a fair compensation is made to the original grantor agency for the latter's share of the property. The amount of compensation shall be commuted by applying the percentage of federal participation in the grant program to the current fair market value of the property.
    - (3) If the grantee has no need for the property, disposition of the property shall be made as follows:



- (a) Nonexpendable property with an acquisition cost of \$1,000 or less. Except for that property which meets the criteria of subparagraph 4(a)(2)(a) above, the grantee shall sell the property and reimburse the federal grantor agency an amount which is computed in accordance with subparagraph (iii) below.
- (b) Nonexpendable property with an acquisition cost of over \$1,000. The grantee shall request disposition instructions from the grantor agency. The federal agency shall determine whether the property can be used to meet the agency's requirement. If no requirement exists within that agency, the availability of the property shall be reported to the General Services Administration (GSA) by the federal agency to determine whether a requirement for the property exists in other federal agencies. The federal grantor agency shall issue instructions to the grantee within 120 days and the following procedures shall govern:
  - (i) If the grantee is instructed to ship the property elsewhere, the grantee shall be reimbursed by the benefiting federal agency with an amount which is computed by applying the percentage of the grantee's participation in the grant program to the current fair market value of the property, plus any shipping or interim storage costs incurred.
  - (ii) If the grantee is instructed to otherwise dispose of the property, it shall be reimbursed by the federal grantor agency for such costs incurred in its disposition.
  - (iii) If disposition instructions are not issued within 120 days after reporting, the grantee shall sell the property and reimburse the federal grantor agency an amount which is computed by applying the percentage of federal participation in the grant program to the sales proceeds. Further, the grantee shall be permitted to retain \$100 or ten percent (10%) of the proceeds, whichever is greater, for the grantee's selling and handling expense.
- (4) Where the grantor agency determines that property with an acquisition cost of \$1,000 or more and financed solely with federal funds is unique, difficult, or costly to replace, it may reserve title to such property, subject to the following provisions:
  - (a) The property shall be appropriately identified in the grant agreement or otherwise made known to the grantee.
  - (b) The grantor agency shall issue disposition instructions within 120 days after the completion of the need for the property under the Federal grant for which it was acquired. If the grantor agency fails to issue disposition instructions within 120 days, the grantee shall apply the standards of subparagraphs 4(a)(1), 4(a)(2)(b) and 4(a)(3)(b) above.

- b. Federally-owned nonexpendable personal property. Unless statutory authority to transfer title has been granted to an agency, title to federally-owned property (property to which the federal government retains title including excess property made available by the federal grantor agencies to grantees) remains vested by law in the federal government. Upon termination of the grant or need for the property, such property shall be reported to the grantor agency for further agency utilization or, if appropriate, for reporting to GSA for other federal agency utilization. Appropriate disposition instructions will be issued to the grantee after completion of federal agency review.
5. The grantees' property management standards for nonexpendable personal property shall also include the following procedural requirements:
- a. Property records shall be maintained accurately and provide for: a description of the property; manufacturer's serial number or other identification number; acquisition date and cost; source of the property; percentage of federal funds used in the purchase of property; location, use, and condition of the property; and ultimate disposition data including sales price or the method used to determine current fair market value if the grantee reimburses the grantor agency for its share.
  - b. A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years to verify the existence, current utilization, and continued need for the property.
  - c. A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft to the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented.
  - d. Adequate maintenance procedures shall be implemented to keep the property in good condition.
  - e. Proper sales procedures shall be established for unneeded property which would provide for competition to the extent practicable and result in the highest possible return.
6. When the total inventory value of any unused expendable personal property exceeds \$500 at the expiration of need for any federal grant purposes, the grantee may retain the property or sell the property as long as he compensates the federal government for its share in the cost. The amount of compensation shall be computed in accordance with subparagraph 4(a)(2)(b) above.
7. Specified standards for control of intangible property are provided as follows:
- a. If any program produces patentable items, patent rights, processes, or inventions, in the course of work aided by a Federal grant, such fact shall be promptly and fully reported to the grantor agency. Unless there is prior agreement between the grantee and grantor on disposition of such items, the grantor agency shall determine whether protection on such invention or discovery shall be sought and how the rights in the invention or discovery -- including rights under any patent issued thereon -- shall be allocated and administered in order to protect the public interest consistent with "Government Patent Policy" (President's Memorandum for Heads of Executive

Departments and Agencies, August 23, 1971, and Statement of Government Patent Policy as printed in 36 F.R. 16889).

- b. Where the grant results in a book or copyrightable material, the author or grantee is free to copyright the work, but the Federal grantor agency reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use the work for Government purposes

WHEN RECORDED, MAIL TO:

City of Alameda  
c/o Housing Authority of the City of Alameda  
701 Atlantic Avenue  
Alameda, CA 94501  
Attn: Executive Director

THIS DOCUMENT IS RECORDED ON BEHALF  
OF THE HOUSING AUTHORITY OF THE CITY OF ALAMEDA  
AND IS EXEMPT FROM RECORDING FEES PURSUANT TO  
GOVERNMENT CODE SECTION 6103, NO FEE 27383.

**REGULATORY AGREEMENT**

**between**

**THE CITY OF ALAMEDA**

**and**

**ALAMEDA POINT COLLABORATIVE, INC.**

**January 13, 2012**

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Section 1. Definitions. Unless otherwise expressly provided herein or unless the context clearly requires otherwise, the following terms shall have the respective meaning set forth below for all purposes of this Regulatory Agreement:

**"Agreement"** means this Regulatory Agreement.

**"Contract"** means the contract entered into between the Owner and the City dated as of January 13, 2011 governing the use of HOME funds for the Project.

**"City"** means City of Alameda, a municipal corporation existing under the law of the State of California and its Charter, and its successors and assigns.

**"Date of Initial Occupancy"** means the date that the Project is first occupied by tenants following completion of rehabilitation.

**"HOME"** means the HOME Investment Partnership Program established by the National Affordable Housing Act of 1990.

**"HOME Unit"** means each of the two (2) dwelling units in the Project assisted with HOME funds.

**"HUD"** means the United States Department of Housing and Urban Development and its successors.

**"Income Certification"** means a certification as to income executed by a household in the Project, in substantially the form attached hereto as Exhibit B.

**"Median Gross Income for the Area"** means the median income for the Oakland Primary Metropolitan Statistical Area ("**PMSA**") as determined by the Secretary of Housing and Urban Development under Section 8(f)(3) of the United States Housing Act of 1937, as amended. In the event that programs under Section 8(f) are terminated, the median income shall be determined per written direction of the City in a manner similar to current formula determination.

**"Owner"** means Alameda Point Collaborative, Inc., a California nonprofit public benefit corporation, as the owner of a long-term leasehold interest in the Property, and its successors.

**"Participation in the Project"** means that the City has invested an initial dollar amount of \$379,000 of HOME funds in the Project, representing approximately 15% of the total projected Project cost. To the extent that major improvements beyond normal maintenance and repair are paid for by the Owner, this percentage may be adjusted, at the sole discretion of the City. Major improvements paid for by the City shall not be considered paid for by the Owner. All computations of Participation in the Project will

value initial and subsequent contributions by City and Owner to the land and permanent facility in constant dollars, based on the national Consumer Price Index.

**"Project" or "Property"** shall mean the leasehold interest of Owner in the real property located at Buildings 802 and 803 commonly known as 240 and 230 Corpus Christi Road, Buildings 812 and 806 commonly known as 2451 and 2471 Orion Street, and Buildings 809, 810, and 811 commonly known as 201, 251, and 271 Stardust Place, Alameda, California, and specifically described in Exhibit A to this Regulatory Agreement, together with the improvements to be rehabilitated by Owner on the Property.

**"Very Low Income Household" and "Very Low Income Tenant"** means the occupants of a HOME Unit in the Project whose household income, adjusted for household size, as computed pursuant to the Income Certification, does not exceed fifty percent (50%) of the Median Gross Income for the Area. Determination of the status of an occupant of a HOME Unit as a Very Low Income Tenant shall be made upon initial occupancy of a unit in the Project by such occupant and recertified annually. A tenant who qualifies as a Very Low Income Tenant remains qualified as a Very Low Income Tenant even if such household's income rises above the limit established in this section, in which event Owner shall make the next available non-HOME designated unit available for a Very Low Income Household.

#### Section 1.1 Interpretation.

- a. Words importing any gender include all genders. Words importing persons include firms, associations and corporations. Words importing the singular shall include the plural and vice versa.
- b. The terms "herein", "hereunder", "hereby", "hereto", "hereof" and any similar terms refer to this Agreement; the term "heretofore" means before the date of this Agreement; and the term "hereafter" means after the date of this Agreement.
- c. Articles and Sections mentioned by number only are the respective Articles and Sections of this Agreement so numbered. Reference to "this Article," "this Section" or "this subsection" shall refer to the particular Article, Section or subsection in which such reference appears. Any captions, titles or heading preceding the text of any Article or Section herein and any table of contents or index attached to this Agreement or any copy thereof are solely for convenience of reference and shall not constitute part of this Agreement or affect its meaning, construction, or effect.

Section 2. Terms of Agreement. The term of this Agreement shall be for fifteen (15) years from Date of Initial Occupancy. At the end of this term, Owner may either request an extension of the term of this Agreement or request disposition instructions from the City per Section 16 of this Agreement.



Section 3. Use of Property. Home Units shall be used for housing Very Low Income Households in accordance with the HOME Program regulations 24 CFR Part 92 (the “**HOME Regulations**”).

Section 4. Occupancy. After the Date of Initial Occupancy, the Project shall include two (2) units of housing for Very Low Income Households, which shall be regulated in accordance with the HOME Regulations.

Section 5. Rent Levels. Rent levels in the HOME Units shall be established as HOME low rent in accordance with HOME Regulations. HUD updates allowable HOME rents annually and the City or its designee will inform Owner of the new rents as soon as the City receives them. Any changes to the HOME allowable rents, either increases or decreases, shall be passed on to tenants upon renewal of a lease or to a new tenant moving into a vacated unit.

Section 6. Eviction. As provided by 24 CFR Part 92.253 of the HOME Regulations, eviction of Very Low Income Tenants shall be only for serious or repeated violation of the lease; violation of applicable federal, state, or local law; or for other good cause.

Section 7. Project Operations. At all times the two (2) HOME units regulated under this Agreement must be operated in conformance with HOME Regulations and with the Contract. Owner shall inform the City in writing of any complaints about the Project. If in the sole opinion of the City, the Owner has failed to comply with HOME Regulations or the Contract, that failure shall constitute an Event of Default under this Agreement as defined in Section 17 of this Agreement.

Section 8. Property Management. The Owner shall maintain the Property in good condition, good repair, and free of trash, weeds, and other debris. No items shall be stored in those areas designated as open space or for parking. Owner shall not substantially subtract from any real or personal property of the Project nor demolish any part of the Property without prior written approval from City or its designee, except normal maintenance and repair. City has the right to inspect the interior of the Property with forty-eight (48) hour advance notice and the exterior of the Property with no advance notice.

- a. Owner shall be responsible for ensuring the Project's property management either by performing the services itself or by hiring the services of a professional property manager overseen by Owner. These responsibilities include processing financial statements, handling of receivables and payables, tenant selection, and compliance with terms and conditions of this Agreement.
- b. With the City's approval, Owner may perform the Project's property management or at the City's discretion, the City may require Owner to hire the services of a professional property management company who will be responsible for the above services. Notwithstanding the foregoing, Owner shall remain primarily

responsible for such property management. City has the right to approve or disapprove any proposed property management company. Owner shall continue to hire such services until the City grants, in writing, approval to discontinue such services.

- c. City or its designee will give Owner thirty (30) days to resolve any failure to perform under this Section 8.

Section 9. Operating Budget.

- a. The fiscal year for the Project shall commence on July 1 and conclude on June 30 of the following calendar year; provided, however, that pursuant to IRS Code Section 706(b), upon tax credit syndication of the Project the fiscal year of the Project shall be adjusted to correspond to the fiscal year of the tax credit investor limited partner. The initial and subsequent operating budgets may be created by the Owner or Owner's agent, however, they shall be subject to the review and written approval of the City or its designee.
- b. The Owner shall submit to the City or its designee a proposed annual operating budget for the Project not less than ninety (90) days prior to the beginning of each fiscal year of the Project following the Date of Initial Occupancy. The proposed operating budget shall set forth the anticipated gross income of the Project and a detailed estimate of all operating costs thereof, which shall include an itemization of administrative expenses, maintenance expenses, cost of utilities, hazard insurance, taxes and assessments, and deposits to all funds, reserves or accounts required by the City or its designee and/or established by the Owner. Upon approval by the City, such proposed operating budget shall be the operating budget for the next fiscal year of the Project.

Section 10. Reporting. Owner shall submit annual reports in a form approved by the City or its designee, no later than thirty (30) days after the end of Owner's fiscal year. The reports shall contain such information as the City or its designee may then require, including, but not limited to, the following:

- a. A statement of the fiscal condition of the Project, including a financial statement indicating surpluses or deficits in operating accounts, a detailed itemized listing of income and expenses, and the amounts of any fiscal reserves. The report due after the end of each fiscal year shall contain an audited version of this statement. Such audit shall be prepared in accordance with the requirements of the City and certified at the Project's expense by an independent Certified Public Accountant licensed by the State of California.
- b. The physical defects in the Project, if any, including a description of any major repair or maintenance work undertaken in the reporting period.

- c. The occupancy of the Project indicating:
  - 1. The number of HOME Units available to and/or actually occupied by Very Low Income Tenants;
  - 2. A listing of current Very Low Income Tenant names, income levels, move-in dates and the ethnic groups to which Very Low Income Tenants belong if known; and
  - 3. General management performance, including tenant relations and other relevant information.
- d. The Owner shall submit to the City reports required under this Section 10 or other such reports as may be required by the City. Upon request of the City or its designee, Owner shall also furnish copies of all tenant agreements.

Section 11. Availability of Records. All tenant lists, applications, verification of tenant income, and waiting lists relating to the Project shall at all times be kept separate and identifiable from any other business of the Owner which is unrelated to the Project, shall be maintained by the Owner in a reasonable condition for proper audit, and are subject to examination during business hours by representatives of the City to the extent permissible under laws and regulations protecting individual confidentiality. Failure to keep such lists and applications or to make them available to the City will be a default hereunder. Records shall be kept for a minimum of five (5) years beyond the term of this Agreement.

Section 12. Nondiscrimination. Owner will not exclude or discriminate against any person in the United States, on the grounds of race, color, religion, national origin, sex, sexual orientation, familial status, physical or mental disability, or age, from participating in, or benefiting from, any program or activity related to the Project. Specifically, Owner will not, based on the above grounds:

- a. Deny any service or other benefit provided under any program activity;
- b. Provide any service or other benefit which is different, or is provided in a different form from that provided to others under any program or activity;
- c. Subject to segregated or separate treatment in any facility in, or in any manner or process related to receipt of any service or benefit under any program or activity;
- d. Restrict in any way the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit under any program or activity;
- e. Treat an individual differently from others in determining whether that individual

satisfies any admission, enrollment, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any service or other benefit provided under any program or activity; or

- f. Deny an opportunity to participate in any program or activity as an employee.

Section 13. Encumbrance of Property. Owner shall not encumber the Property, including the granting of commercial leases, entering into covenants, transferring such Property (except for apartment leases entered into by qualified tenants) or allowing the placement of any liens, notes or deeds or use the Property as security for a note or loan except (a) with the Promissory Note and Deed of Trust of even date herewith, (b) with the written consent of the City or its designee, or (c) upon a sale or transfer of the Project in accordance with the terms of this Agreement.

Section 14. Subordination Agreement. If necessary to secure other financing, City may execute a subordination agreement resulting in City's security interest in the Property becoming subject to and of lower priority than the lien of some other security instrument. Such agreement shall be entered into only after City has reviewed and approved the form of the subordination agreement.

Section 15. Change of Use. The Property shall be used as specified under Section 3 above for the term of this Agreement. If the Owner finds that the Property is no longer financially feasible, Owner may dispose of the Property as set forth in Section 16 of this Agreement.

Section 16. Disposition of Property. If the Owner finds that the Property is financially infeasible or the term of this Agreement is about to expire, Owner shall request written disposition instructions from the City. Owner shall undertake one of the following as directed by the City:

- a. Owner may retain title to the Property upon full repayment of all principal and interest of the City's Participation in the Project.
- b. Owner may sell the Property under guidelines provided by the City and pay the City an amount equal to the City's percentage of Participation in the Project of the proceeds from sale (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds).
- c. Owner may transfer to the City title to the Property. Such transfer shall not entitle Owner to any compensation.
- d. If necessary, fair market value of the Property, unless otherwise agreed upon by the City and Owner, shall be established by an appraisal by a qualified appraiser acceptable to both parties. If City and Owner cannot agree upon the selection of

an appraiser within ten (10) days of the date that Owner provides written notice of its intent to dispose of or transfer the Property, Owner and City shall each have the right to select one (1) appraiser. Within ten (10) days thereafter, the appraisers so selected shall select an additional appraiser similarly qualified. Each party shall be responsible for the costs incurred by its appraiser and shall divide the cost of the third appraiser equally between them. If either City or Owner fails to select an appraiser within thirty (30) days, the other party's appraiser shall be deemed mutually agreed upon. Each of the appraisers shall make an independent appraisal of the Property. The fair market value shall be the average of the two (2) appraisals closest in value.

Section 17. Defaults; Remedies. If the Owner shall fail to observe or perform, in the sole discretion of the City or its designee, any covenant, condition or agreement contained herein, or on its part to be observed or performed, for a period of thirty (30) days after written notice from the City or its designee specifying such failure and requesting that it be remedied, unless the City or its designee shall agree in writing to an extension of such time prior to its expiration, which consent shall not be unreasonably withheld in the event that the failure specified in the notice cannot be corrected within the applicable period and the Owner has instituted corrective action within the applicable period and has diligently pursued such corrective action, then and in such event (an "**Event of Default**"), the City shall be entitled to and in addition to all other remedies provided by law or in equity:

- a. to compel specific performance by the Owner of its obligations under this Agreement, it being recognized that the beneficiaries of the Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of the Owner's default;
- b. to the extent permissible under laws and regulations protecting individual confidentiality, to have access to, to inspect, and to make copies and to audit all books and records of the Owner pertaining to the Project.
- c. to cause the Owner to pay to the City or its designee, if the thirty (30) day cure period has been exceeded and no cure has been achieved, as a penalty, an amount equal to all rent received by the Owner with respect to HOME Units, if HOME Units are knowingly or negligently rented to persons who do not comply with the requirements of such Units.
- d. to conduct an evaluation of, and direct the Owner with respect to, the management and operation of the Project. The expenses of the City or any consultants associated with such evaluation and direction shall be reimbursed by the Owner. The Owner shall follow all such directives, which may, at the option of the City, include replacing existing management with new management. In the event such default includes the failure of the Owner to make any required payment to the City in a timely manner, or the imminent closure of the Project,

the City may at its sole discretion select the new management. The City may retain attorneys and consultants to assist in such evaluation and the Owner shall pay the reasonable fees and expenses of such attorneys and consultants and any other expenses incurred by the City in that connection.

- e. Notwithstanding any other provisions of the law relating to the acquisition, management or disposal of real property by the state, the City shall have the power to do any or all of the following:
  - 1. Possess, operate, complete, lease, rent, renovate, modernize, insure, or sell for cash or credit, in its sole discretion any properties conveyed to it in exchange for debentures as provided in the Insurance Law.
  - 2. Pursue to final collection by way of compromise or otherwise all claims against the Owner assigned by Owner to the City; or
  - 3. Convey and execute in the name of the City deeds of conveyance, deeds of release, assignments and satisfactions of the Deed of Trust, and any other written instrument relating to real or personal property or any interest therein acquired by the City.

Section 18. Notices.

- a. All notices, certificates or other communications, with the exception of status reports required under Section 10 above, shall be sufficiently given and shall be deemed given on the second day following the date on which the same have been mailed by certified mail, postage prepaid, addressed as follows:

If to the City:                      City of Alameda  
   c/o Housing Authority of the City of Alameda  
   701 Atlantic Avenue  
   Alameda, CA 94501  
   Attention: Executive Director

If to the Owner:                      Alameda Point Collaborative, Inc.  
   677 West Ranger Avenue  
   Alameda, CA 94501  
   Attention: Executive Director

- b. Status reports, as required under Section 10 above, shall be sufficiently given and shall be deemed given on the second day following the date on which the same have been mailed to the City, addressed as specified in this Section 18.
- c. The City and the Owner may, by notice given hereunder, designate any further or

different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 19. Indemnification.

- a. The Owner hereby covenants and agrees that it shall, at its own expense, defend, indemnify and hold harmless the City, its respective officers, directors, officials, employees and agents (the "**Indemnitee**") from and against any and all claims by or on behalf of any person arising from any cause whatsoever in connection with the performance by the Owner and its officers, directors, officials, employees and agents under this Agreement, any and all claims arising from any act or omission of the Owner or any of its agents, contractors, servants, employees or licensees in connection with the Project, including but not limited to construction and operations, and all costs, counsel fees, expenses, or liabilities incurred in connection with any such claim or proceeding brought thereon; except that the Owner shall not be required to indemnify the Indemnitee for damages caused by the negligence or willful misconduct of any Indemnitee.
- b. In the event that any action or proceeding is brought against the City, or any of its respective officers, directors, officials, employees or agents, with respect to which indemnity may be sought hereunder, the Owner, upon written notice from the indemnified party, shall assume the investigation and defense thereof, including the employment of counsel and the payment of all separate counsel in any such action or proceedings and to participate in the defense thereof, and the Owner shall pay the fees and expenses of such separate counsel.
- c. The Owner also shall pay and discharge and shall indemnify and hold harmless the City from (i) any lien or charge upon payments by the Owner to the City, and (ii) any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges in respect of any portion of the Project. If any such claim is asserted, or any such lien or charge upon payments, or any such taxes, assessments, impositions or other charges are sought to be imposed, the City or its designee shall give prompt notice to the Owner and the Owner shall have the sole right and duty to assume, and shall assume, the defense thereof, with full power to litigate, compromise or settle the same in its sole discretion.
- d. In addition thereto, the Owner will pay upon demand all of the fees and expenses paid or incurred by the City in enforcing the provisions hereof.
- e. In addition, Owner will maintain, at all times during the term of this Agreement, hazard and liability insurance sufficient to protect City's interest.

Section 20. Recordation of Regulatory Agreement. The Owner shall cause this

Agreement and all amendments and supplements hereto to be recorded in the Official Records of the County of Alameda, California, and in such other places as the City may reasonably request.

Section 21. Successors Bound. This Agreement and the covenants and conditions contained herein shall run with the land and shall bind, and the benefits shall inure to, respectively, the Owner and its successors and assigns and all subsequent owners of the Project or any interest herein, and the City and its successors and assigns.

Section 22. Severability. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof. Nothing in this Agreement shall prevent the City from exercising any of its rights under the Deed of Trust.

Section 23. Governing Law. This Agreement shall be construed in accordance with the laws of the State of California.

Section 24. Amendments. Except as otherwise provided here under, this Agreement may not be amended, changed, modified, altered or terminated except as permitted in this Agreement. This Agreement shall be amended only by a written instrument executed by the parties hereto or their successors in title, and duly recorded in the Official Records of the County of Alameda, California.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective, duly authorized representatives, as of the day and year first written above.

Alameda Point Collaborative, Inc.,  
a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



CITY OF ALAMEDA,  
a municipal corporation

By: \_\_\_\_\_  
John A. Russo  
City Manager

Recommended for Approval:

By: \_\_\_\_\_  
Michael T. Pucci  
Executive Director  
Housing Authority of the City of Alameda

Approved as to form:

By: \_\_\_\_\_  
Farimah Faiz  
Assistant City Attorney

STATE OF CALIFORNIA )  
 )  
 )  
County of \_\_\_\_\_)

On \_\_\_\_\_, before me, \_\_\_\_\_,  
a Notary Public, personally appeared \_\_\_\_\_, who proved  
to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to  
the within instrument and acknowledged to me that he/she/they executed the same in its/their  
authorized capacity(ies), and that by its/their signature(s) on the instrument the person(s), or the  
entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

(Seal)

STATE OF CALIFORNIA )  
 )  
County of \_\_\_\_\_)

On \_\_\_\_\_, before me, \_\_\_\_\_,  
a Notary Public, personally appeared \_\_\_\_\_, who proved  
to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to  
the within instrument and acknowledged to me that he/she/they executed the same in its/their  
authorized capacity(ies), and that by its/their signature(s) on the instrument the person(s), or the  
entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

(Seal)

**EXHIBIT A**

[Attach legal description]

**EXHIBIT B**

FORM OF VERY LOW INCOME COMPUTATION AND CERTIFICATION

RE: \_\_\_\_\_

Unit Number:

I/We, the undersigned, being first duly sworn, state that I/we have read and answered fully, and truthfully each of the following questions for all persons in the household who are to occupy the Unit in the above residence for which application is made, all of whom are listed below:

<u>Name of</u> <u>Tenant(s)</u>	<u>Age</u>	<u>Social</u> <u>Security #</u>	<u>Source of Income</u> <u>or Place of Employment</u>
_____	_____	_____	

I. The anticipated income of the above persons during the 12-month period beginning this date, including income described in (A) below, but excluding all income described in (B) below, is \$\_\_\_\_\_.

(A) The amount set forth above includes all of the following income:

- (i) all wages and salaries, over-time pay, commissions, fees, tips and bonuses before payroll deductions;
- (ii) net income from the operation of a business or professional or from the rental of real or personal property (without deducting expenditures for business expansion or amortization of capital indebtedness or any allowance for depreciation of capital assets);
- (iii) interest and dividends (include all income from assets as set forth in item (B)(vii) below;
- (iv) the full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts;
- (v) payment in lieu of earnings, such as unemployment and disability compensation, workmen's compensation and severance pay;
- (vi) the maximum amount of public assistance available to the above persons;
- (vii) periodic and determinable allowances, such as alimony and child support

payments and regular contributions and gifts received from persons not residing in the dwelling;

- (viii) all regular pay, special pay and allowances of a member of the armed forces (whether or not living in the dwelling) who is the head of the household or spouse; and
- (ix) any earned income tax credit to the extent it exceeds income tax liability.

(B) The following income is excluded from the amount set forth above:

- (i) casual, sporadic or irregular gifts;
- (ii) amounts which are specifically for or in reimbursement of medical expenses;
- (iii) lump sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for person or property losses;
- (iv) amounts of educational scholarships paid directly to a student or an educational institution, and amounts paid by the government to a veteran for use in meeting the costs of tuition, fees, books and equipment, but in either case only to the extent used for such purposes;
- (v) hazardous duty pay to a member of the household in the armed forces who is away from home and exposed to hostile fire;
- (vi) relocation payments under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
- (vii) income from employment if children (including foster children) under the age of 18 years;
- (viii) foster child care payments;
- (ix) the value of coupon allotments under the Food Stamp Act of 1977;
- (x) payments to volunteers under the Domestic Volunteer Service Act of 1973;
- (xi) payments received under the Alaska Native Claims Settlement Act;
- (xii) income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes;

(C) TOTAL ELIGIBLE INCOME  
(line I(A) plus line I(B)): \$

II. Qualification as a Very Low Income Household:

(A) Is the amount entered in line I(C) less than 50% of Median Gross Income for the Area for a household of one?\*

Yes\_\_\_\_\_ No

(B) (i) If line II(A) is "No", then the individual does not qualify as a Very Low Income Household;

skip to item III.

(ii) If line II(A) above is "Yes", then the individual qualifies as a Very Low Income Household;

skip to item III.

III. (Check one)

\_\_\_ The individual does not qualify as a Very Low Income Household.

\_\_\_ The individual qualifies as a Very Low Income Household.

IV. Unit number assigned:  
(Enter here and on page one)

Owner

\*"Median Gross Income for the Area" means the median income for the area where the Project is located as determined by the Secretary of Housing and Urban Project under Section 8(f)(3) of the United States Housing Act of 1937, as amended, or if programs under Section 8(f) are terminated, median income determined under the method used by the Secretary prior to the termination.